



Docket No.: 1454.1079

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Rudolf KODES

Serial No. 09/889,666

Group Art Unit: 2123

Confirmation No. 6964

Filed: September 25, 2001

Examiner: Kandasamy THANGAVELU

For: METHOD AND DEVICE FOR PRETREATMENT

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37

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Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

Sir:

The following comprises the Appellants' Brief on Appeal from the final rejection, dated May 24, 2007 of claims 5, 6, 7, 9, 11, 20, and 21. This Appeal Brief is accompanied by the required appeal fee set forth in 37 C.F.R. § 41.20(b)(2). Appellants' Notice of Appeal was filed on June 18, 2007. Therefore, the present Appeal Brief is timely filed.

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Appellant's Brief on Appeal under 37 C.F.R. § 41.37 dated July 18, 2007
Appeal of final Office Action dated May 24, 2007

I. REAL PARTY IN INTEREST

The above-captioned application is assigned in its entirety to SIEMENS AKTIENGESELLSCHAFT, having a corporate situs of Wittelsbacherplatz 2, D-80333 Munich, Germany.

II. RELATED APPEALS AND INTERFERENCES

Appellants state that, upon information and belief, Appellants are not aware of any co-pending appeal or interference that will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 5, 6, 7, 9, 11, 20, and 21 are pending in the application. Claims 1-4, 8, 10, and 12-19 were cancelled. Claims 5, 6, 7, 9, 11, 20, and 21 were rejected. The rejection of claims 5, 6, 7, 9, 11, 20, and 21 is being appealed.

IV. STATUS OF AMENDMENTS

No amendments were filed subsequent to the final rejection of May 24, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Line and page numbers are with respect to English translation of International Application PCT/DE00/00075, a copy of which was filed originally with the application.

Independent claim 21 is directed to a method of modeling an engineering activity 101 having a plurality of interrelated events with relationships defined between the events, as described at page 1, lines 5-14. In the method, the model of the engineering activity 101 is displayed with all relationships being shown, as shown in Figs. 1 and 2 and described at page 5, lines 1-8 and 22-36. Then, a first event of the engineering activity 101 is selected using a graphical user interface GUI, as described at page 3, lines 20-23 and page 6, lines 19-28. Next, connections are prepared to connect the first event of the engineering activity 101 to a set of second events of the engineering activity 101 in a cause-and-effect relationship, as shown in Figs. 1 and 2 and described at page 3, lines 13-19 and page 5, lines 22-29. Then, at least one third event of the engineering activity 101 is determined from the set of second events, as shown in Fig. 4 and described at page 2, lines 15-23 and page 7, line 17-28. Then, at least one second connection is prepared to connect the at least one third event to the first event in a predecessor/successor relationship, as described at page 2, lines 32, 33, and 34 and page 6, lines 29-34.

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed in this Appeal:

The rejection of claims 5, 6, 7, 9, 11, 20 and 21 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,278,977 to Agrawal et al. (hereinafter "Agrawal") in view of U.S. Patent No. 6,324,495 to Steinman (hereinafter "Steinman"), and further in view of U.S. Patent No. 5,503,249 to Virtamo et al. (hereinafter "Virtamo").

VII. ARGUMENTS

Independent claim 21 is patentable over Agrawal in view of Steinman, and further in view of Virtamo.

First, independent claim 21 is patentable over Agrawal in view of Steinman, and further in view of Virtamo because neither Agrawal, Steinman nor Virtamo, nor their combination, disclose all of the features of independent claim 21.

Neither Agrawal, Steinman, nor Virtamo, for example, disclose "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," as recited in the fifth clause of independent claim 21. Thus, even if Agrawal, Steinman and Virtamo were combined as proposed by the Examiner, the claimed invention would not result.

The Examiner acknowledges that Agrawal shows no "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," in section 4.1, at page 3, lines 16, 17, and 18 of the final Office Action mailed May 24, 2007 (hereinafter "the final Office Action"). The Examiner attempts to compensate for this deficiency of Agrawal by combining Agrawal with Steinman.

Steinman, however teaches no "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," either, and thus cannot make up for the deficiencies of Agrawal with respect to independent claim 21. Steinman, rather, relates to *discrete* event simulation so that the objects being simulated may *interact*, not "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," as recited in independent claim 21. In particular, as described at column 1, lines 32-35:

The invention relates to discrete event simulation of objects using a plurality of synchronous parallel computers in communication with each other so that the objects being simulated may interact.

Since Steinman relates to discrete event simulation, Steinman is not "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," as recited in independent claim 21.

In Steinman, rather, events associated with a simulated object are maintained in

increasing *time* order by the event queue, not "in a cause-and-effect relationship." In particular, as described at column 1, lines 39-43:

Discrete event simulation of objects on a single digital processor is not very difficult. In the standard approach, all events associated with a simulated object are tagged with a time index, inserted in an event queue, and maintained in increasing time order by the event queue as events in the simulation are scheduled at discrete points in time.

Since, in Steinman, events associated with a simulated object are maintained in increasing time order by the event queue, Steinman is not "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," as recited in independent claim 21.

Furthermore, in Steinman, the sequence in which events are simulated is defined by the *time* indices, not by "a cause-and-effect relationship." In particular, as described at column 1, lines 43-47:

Simulation proceeds in the computer by processing the event from the queue having the lowest time index. The resulting simulation of events in sequence is thus defined by the time indices.

Since, in Steinman, the sequence in which events are simulated is defined by the time indices, Steinman is not "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," as recited in independent claim 21.

Furthermore, in Steinman, the cause-and-effect relationship is the interaction between processing an event and scheduling new events. All Steinman does with this is tag the new events with time indices greater than or equal to the current simulation time index, and insert them into the event queue. Thus, the cause-and-effect relationship merely dictates the *order* in which the new events are placed in the queue, not "first connections to connect the first event of the engineering activity to a set of second events of the engineering activity," as recited in independent claim 21. In particular, as described at column 1, lines 48-54:

Processing an event can affect the state variables of an object and can schedule new events to occur in the future for one or more simulated objects. This interaction of cause and effect requires that new events generated be tagged with time indices greater than or equal to the current simulation time index. The generated new events are simply inserted into the event queue in their proper time index sequence.

Since, in Steinman, the interaction of cause and effect requires that new events generated be tagged with time indices greater than or equal to the current simulation time index, Steinman is not "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," as recited in independent claim 21.

Steinman, in fact, maintains two *lists*, a primary list which is sorted, and a secondary list which is unsorted. In particular, as described at column 8, lines 36, 37, and 38:

The basic idea of this new technique is that two lists are continually maintained.
The primary list is sorted, while the secondary list is unsorted.

Since, in Steinman, events in the primary list are sorted, while the secondary list is unsorted, Steinman is not "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," as recited in independent claim 21.

Steinman, moreover, puts new events into the secondary list as they are *scheduled*. In particular, as described at column 8, lines 38-42:

As new events are scheduled, they are put into the secondary list. The earliest event scheduled to occur in the secondary list is preserved. When the time to process this event comes, the secondary list is sorted and then merged into the primary list.

Since Steinman puts new events into the secondary list as they are scheduled, Steinman is not "preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship," either, and thus cannot make up for the deficiencies of Agrawal with respect to independent claim 21 in any case. Thus, even if Agrawal and Steinman were combined as proposed by the Examiner, the claimed invention would not result.

The Examiner asserts, in section 5.1, at page 8 of the final Office Action, lines 18, 19, and 20, that:

The specification and the originally filed claims do not discuss cause-and-effect relationship between events of an activity anywhere. The Examiner directs the applicants to show wherein the specification there is description of cause and effect relationship.

This is submitted to be incorrect. To the contrary, connections are shown being prepared to connect a first event of an engineering activity 101 to a set of second events of the

engineering activity 101 in a cause-and-effect relationship in Figs. 1 and 2, and described at page 3, lines 13-19 and page 5, lines 22-29 of the English translation of the International Application PCT/DE00/00075, a copy of which was filed originally with the application.

Explicit support for claim language, moreover, is not required. It is well-settled, rather, that the test for compliance with the *description* requirement is whether a person skilled in the art would reasonably conclude from the disclosure whose filing date is being relied on that the inventor had possession, as of the filing date, of the claimed invention. See, e.g., *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563, 19 U.S.P.Q. 2d 1111, 1116 (Fed.Cir. 1991) and cases discussed therein. How the disclosure accomplishes this fact is unimportant. *Id.* The lack of literal basis in the specification for a negative limitation may be not be sufficient to establish a *prima facie* case for lack of descriptive support. *Ex parte Parks*, 30 U.S.P.Q. 2d 1234, 1236 (Board of Patent Appeals and Interferences 1993).

The Examiner asserts further, in section 5.1, at page 9 of the final Office Action, line 8, that:

The applicants did not discuss event-based activity network in the specification.

This is also submitted to be incorrect. To the contrary, event-based activity is shown in Figs. 1 and 2 and described at, inter alia, page 2, lines 15-23, 32, 33, and 34, page 3, lines 13-23, page 5, lines 22-29, page 6, lines 19-34, page 7, line 17-28 of the English translation of the International Application PCT/DE00/00075, a copy of which was filed originally with the application.

Finally, the Examiner asserts in section 5.1, at page 9 of the final Office Action, lines 12-15, that:

There is no mention of cause and effect relationship in the specification. Since the applicants did not describe event-based activity network or the cause-and-effect relationship in the specification, the examiner assumed implicit cause-and-effect relationship in event-based activity network to interpret the claims.

This is also submitted to be incorrect. Both event-based activity and a cause-and-effect relationship are described in the specification, as discussed above. The Examiner, furthermore, is not free to assume *implicit* cause-and-effect relationship in event-based activity network to interpret the claims. As provided by the M.P.E.P. §2143.03, rather, *all* claim limitations must be taught or suggested by a reference.

To establish *prima facie* obviousness of a claimed invention, all the claim

limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Thus, to assume implicit cause-and-effect relationship in event-based activity network to interpret the claims is an error.

Finally, with respect to the article by Sanderson et al., to which the Examiner refers in the paragraph bridging pages 9 and 10, the Examiner makes no assertion that persons of ordinary skill in the art at the time the invention was made would even have viewed the article, let alone been motivated to modify Agrawal thereby.

Accordingly, because neither Agrawal, Steinman, nor Virtamo, nor their combination, disclose all of the features of independent claim 21, the Examiner has failed to set forth a prima facie case of obviousness of independent claim 21 by Agrawal in view of Steinman and Virtamo. Appellants, therefore, request respectfully that the rejection of independent claim 21 be withdrawn.

Second, independent claim 21 is patentable over Agrawal in view of Steinman, and further in view of Virtamo because neither Agrawal, Steinman nor Virtamo, nor their combination, disclose all of the features of independent claim 21.

Neither Agrawal, Steinman, nor Virtamo, for example, disclose "preparing at least one second connection to connect the at least one third event to the first event in a predecessor/successor relationship," as recited in the seventh clause of independent claim 21. Thus, even if Agrawal, Steinman and Virtamo were combined as proposed by the Examiner, the claimed invention would not result.

The Examiner acknowledges that neither Agrawal nor Steinman show "preparing at least one second connection to connect the at least one third event to the first event in a predecessor/successor relationship," in section 4.1, at page 4, lines 8 and 9 of the final Office Action. The Examiner attempts to compensate for this deficiency of Agrawal and Steinman by combining them with Virtamo.

Virtamo, however, teaches no "preparing at least one second connection to connect the at least one third event to the first event in a predecessor/successor relationship," either, and thus cannot make up for the deficiencies of either Agrawal or Steinman with respect to the

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claimed invention. In particular, there is no second connection between the move event and the stop event in Virtamo, contrary to the Examiner's assertion at page 4, lines 13 and 14 of the final Office Action. The pass event does not have to happen, so a pass event is not "inherent."

Similarly, there is no second connection between an open event and a close event in Virtamo, either, contrary to the Examiner's assertion at the bottom of page 4. A passenger does not *have* to board or deboard, so neither a passenger boarding nor a passenger deboarding is "inherent."

Furthermore, just because a passenger *may* deboard does not establish the inherency of a passenger deboarding. Rather, as provided in the M.P.E.P. § 2112(IV):

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

Thus, the fact that a passenger *may* deboard does not establish the inherency of a passenger deboarding. *In re Rijckaert*.

As provided further in the M.P.E.P. § 2112(IV):

"To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' "*In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Thus, the fact that a passenger *may* deboard is not sufficient to establish inherency. *In re Robertson*. Therefore, since neither Agrawal, Steinman nor Virtamo show "preparing at least one second connection to connect the at least one third event to the first event in a predecessor/successor relationship," even if they were combined, the claimed invention would not result.

The Examiner, in fact, *acknowledges* in section 5.3, at page 11, lines 14 and 15 of the final Office Action, that:

However, if it going from floor 3 to floor 4, then there is no pass event.

Since the pass event does not have to happen in Virtamo, however, the pass event is not "inherent," as discussed above. Virtamo, therefore, teaches no "preparing at least one second connection to connect the at least one third event to the first event in a predecessor/successor

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relationship," either, and thus cannot make up for the deficiencies of either Agrawal or Steinman with respect to the claimed invention.

Finally, the Examiner asserts in section 5.3, at page 11 of the final Office Action, lines 11 and 12, that:

The Examiner takes the position that in the applicants model there does not have to be a second connection between the first event in the third event.

This is also submitted to be incorrect. Independent claim 21, to the contrary, recites "preparing at least one second connection to connect the at least one third event to the first event in a predecessor/successor relationship."

Accordingly, because neither Agrawal, Steinman, nor Virtamo, nor their combination, disclose all of the features of independent claim 21, the Examiner has failed to set forth a prima facie case of obviousness of independent claim 21 by Agrawal in view of Steinman and Virtamo. Appellants, therefore, request respectfully that the rejection of independent claim 21 be withdrawn.

Third, independent claim 21 is patentable over Agrawal in view of Steinman and Virtamo because the Examiner has not made out a prima facie case of obviousness with respect to the combination of Agrawal in view of Steinman and Virtamo proposed by the Examiner.

The test for obviousness under 35 U.S.C. § 103 (a) is set forth by the United States Supreme Court in *Graham v. John Deere, Co.*, 383 U.S. 1, 17-18 (1966). As mandated therein, in an obviousness determination under 35 U.S.C. § 103, the scope and content of the prior art are to be determined, the differences between the prior art and the claims at issue are to be ascertained and the level of ordinary skill in the pertinent art resolved.

The Examiner asserts in section 4.1, beginning at the last line of page 3, and continuing in the first paragraph of page 4 of the final Office Action, that:

It would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to modify the method of Agrawal et al. with the method of Steinman that included connecting a first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship, because processing of an event can affect the state variables of the engineering system and can cause new events to occur in the future for one or more objects in the system; this interaction of cause-and-effect relationship requires that the new events generated be scheduled to occur at activity time later than current time (CL1, L48-54).

Agrawal, to the contrary, seeks to *avoid* the modification proposed by the Examiner. Connecting a first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship, in particular, would mean that a process model would have to be defined externally, and a business process would have to be modeled completely and perfectly before hand, i.e. an 'a priori' approach.

Agrawal, on the other hand, rejects that approach in favor of an 'a posteriori' approach, which means that it is possible to start already with a rough approximation of a process model. In particular, as described at column 4, lines 19-30:

The current approaches to define a process model are 'a priori' approaches, which means that a process model has to be defined externally and has to model a business process completely and perfectly. The existence of such a process model is the prerequisite for its execution. The current approach in contrast is an 'a posteriori' approach, which means that it is possible to start already with a rough approximation of a process model and the proposed method is able to permanently improve the process model. In an evolutionary process the correct process model will be determined by the proposed method.

Thus, modifying Agrawal as proposed by the Examiner, by making connecting a first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship a prerequisite of execution, would change the principle of operation of Agrawal, in contravention of M.P.E.P. §2143.01. As provided therein:

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Since the proposed modification of Agrawal would change the principle of operation of Agrawal, the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*.

The Examiner asserts in section 5.2, at page 10 of the final Office Action, lines 14, 15 and 16, that:

The Examiner takes the position that Agrawal teaches an activity network with events and activities. Such activity networks model activities with predecessor events and successor events.

This is also submitted to be incorrect. Agrawal, to the contrary, wants to start with a set of *unrelated* activities, not with a first event of the engineering activity connected to a set of second

events of the engineering activity in a cause-and-effect relationship. In particular, as described at column 12, lines 19-23:

The present invention allows to start just with the set of unrelated activities and discover the real world relations between them at a later point in time; data mining and OLAP technologies are exploited for this discovery.

Since Agrawal wants to start with a set of unrelated activities, he is not modeling activities with predecessor events and successor events, contrary to the Examiner's assertion.

Agrawal, in fact, teaches away from modeling activities with predecessor events and successor events, when he notes that a problem inherent in business reengineering is that models of business process must be specified before hand. In particular, as described at column 3, lines 36-41:

The inherent problem is that current methodologies of business reengineering are a priori in nature, i.e. it is assumed that the correct process model of a business process to be supported must be specified before workflow technology can be used.

Since, according to Agrawal, a problem inherent in business reengineering is that models of business process must be specified before hand, Agrawal will not be modeling activities with predecessor events and successor events, contrary to the Examiner's assertion.

The Examiner asserts further in section 5.2, at page 10 of the final Office Action, line 16, that:

There is implicit cause-and-effect relationship between events in the activity network.

This is also submitted to be incorrect. Agrawal, to the contrary, wants to start with a set of *unrelated* activities, as discussed above. Agrawal, rather, is about evolutionary discovering and adapting a process model of a business process, not modeling cause-and-effect relationships between events. In particular, as described column 11, lines 56, 57, and 58:

From a global perspective the present invention suggests a method of evolutionary discovering and adapting a process model of a business process.

Since Agrawal is about evolutionary discovering and adapting a process model of a business process, Agrawal shows no cause-and-effect relationships between events, either explicitly or implicitly.

The Examiner asserts further in section 5.2, at page 10 of the final Office Action, lines 18,

19, and 20, that:

The Examiner used Steinman since it describes a simulation model with events (and activities in between the events) and a cause-and-effect relationship between events.

This is also submitted to be incorrect. Steinman, rather, maintains events associated with a simulated object in increasing *time* order by the event queue, not "in a cause-and-effect relationship," as discussed above. But even if Steinman did describe a cause-and-effect relationship between events, there would still have been no reason for persons of ordinary skill in the art at the time the invention was made to modify Agrawal as proposed by the Examiner, since it would change the principle of operation of Agrawal, and since Agrawal teaches away from the modification, as also discussed above.

Accordingly, because the Examiner has not made out a prima facie case of obviousness with respect to the combination of Agrawal in view of Steinman and Virtamo proposed by the Examiner, independent claim 21 is patentable over Agrawal in view of Steinman and Virtamo. Appellants, therefore, request respectfully that the rejection of independent claim 21 be withdrawn.

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**CONTINGENT AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT AND CONTINGENT
PETITION FOR EXTENSION OF TIME**

Unless a check for the present Brief on Appeal is submitted herewith for the fee required under 37 C.F.R. § 41.20(b)(2), please charge said fee to Deposit Account No. 19-3935.

Appellants hereby petition for any extension of time that may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 19-3935.

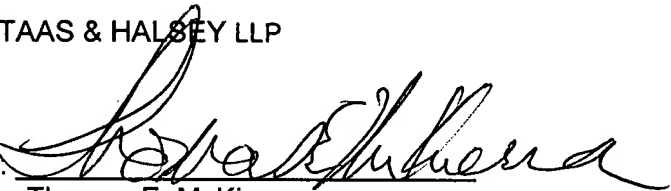
Respectfully submitted,

STAAS & HALSEY LLP

Date:

18 JUL 07

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VIII. CLAIMS APPENDIX

5. (previously presented) The method as claimed in independent claim 21, in which the events have a predecessor/successor relationship with respect to one another.

6. (previously presented) The method as claimed in claim 5, in which the first event precedes the third event in the predecessor/successor relationship.

7. (previously presented) The method as claimed in claim 5, in which the third event succeeds the first event in the predecessor/successor relationship.

9. (previously presented) The method as claimed in independent claim 21, in which the events have associated information, generated as results of the activities.

11. (previously presented) The method as claimed in independent claim 21, in which the graphical representation is effected by means of actuation using a context-sensitive menu.

20. (previously presented) The method as claimed in claim 7, in which the events have associated information, generated as results of the activities.

21. (previously presented) A method comprising:
modeling an engineering activity having a plurality of interrelated events with relationships defined between the events;
displaying the model of the engineering activity with all relationships being shown;
selecting a first event of the engineering activity using a graphical user interface;
preparing first connections to connect the first event of the engineering activity to a set of second events of the engineering activity in a cause-and-effect relationship;
determining at least one third event of the engineering activity from the set of second events;
preparing at least one second connection to connect the at least one third event to the first event in a predecessor/successor relationship; and
displaying the first event together with connections selected from the group consisting of the first connections and the at least one second connection, the first event and the connections

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being displayed without displaying any relationship unless the relationship is defined by a first or second connection.

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.